THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :17.04.2007

CRL.REV.P 610/2006 & BAIL APPLN 3362/2006
FIR No. 200/2006
U/s 302/120B/201/34 IPC R/w 25/27/54/59 Arms Act
P.S. MANGOL PURI

NARENDER MAAN ...Petitioner

- versus -

STATE (NCT DELHI) ...Respondent

Advocates who appeared in this case:

For the Petitioner	:	Mr I. U. Khan, Sr. Advocate with Mr Javed Hashmi
For the Respondent/State	:	Mr V. K. Malik
For the Complainant	:	Mr S. S. Gandhi, Sr. Advocate with Mr R. S. Malik

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J (ORAL)

1. This order shall dispose of Criminal Revision Petition No. 610/2006 and Bail Application No. 3362/2006, both of which have been filed by the same petitioner (Narender Maan).

2. The Criminal Revision Petition is in respect of FIR No. 200/2006, registered at PS Mangol Puri, under Section 302/120B/34 IPC, wherein the petitioner is an accused. In that case the petitioner moved an application for

bail and was granted bail by Sh. D. K. Malhotra, learned Additional Sessions Judge, Rohini, Delhi. Shortly thereafter, the State of NCT of Delhi filed an application under Section 439 (2) of the Code of Criminal Procedure, 1973 for cancellation of bail in the court of the Additional Sessions Judge on 12.06.2006. That application was listed on 13.06.2006 and on that date, the Court issued notice. On 28.06.2006, a reply was filed on behalf of the petitioner to the said cancellation of bail application. In the reply, it was specifically pleaded that bail once granted could not be cancelled unless, *inter alia*, there were allegations of tampering with evidence. The hearing of the application for cancellation of bail was fixed on 06.07.2006. On 04.07.2006, co-accused Rajbir Malik's bail application came up for hearing. The same was adjourned to 05.07.2006.

3. On 04.07.2006, after Rajbir Malik's bail application was adjourned, at about 2 pm, it is alleged that the present petitioner along with others had threatened one Satish Kumar and others, who were with him and who had come to pursue the case against the accused in the said FIR No.200/2006. It is alleged by the prosecution that the present petitioner along with others came towards the small stairs and one of them, aged about 35 years, wearing white pants and shirt, who used to come earlier also for pursuing the case of the accused, held the said Satish Kumar with his shirt collar and told him to stop pursuing the case. It is further alleged that he abused him and threatened to kill

him and he was allegedly told that if he did not stop pursuing the case, he would suffer the same fate as his brother. As per Satish Kumar's statement recorded in FIR No. 524/2006 under Section 323/341/506 IPC read with Section 25/57 of the Arms Act, he believed that the persons who threatened him, acted on the instructions of Shiv Charan, Rajbir Malik and Narender Maan (the petitioner herein), to stop them from pursuing the case by acting in the said manner.

4. Consequent upon the registration of FIR No.524/2006, the petitioner's bail was cancelled on the sole basis of the alleged incident of 04.07.2006, which formed the subject matter of the said FIR No.524/2006. The learned Additional Sessions Judge, while passing the said order of cancellation, observed as under:-

> "13. Hence, yet another case against accused Narender Mann & Ors. was registered vide FIR No. 524/2006 u/s 323/341/506/120B/34 IPC read with Section 25/27/54/57 Arms Act, P. S. Prashant Vihar, Delhi. Accused Narender Mann is now arrested in FIR No. 524/2006 and his application for bail in the said FIR was rejected vide order dated 04.08.2006 by Sh. Norottam Kaushal, Ld. SDJ, Rohini, Delhi, on the ground that:-
>
> **'it is a clear case of misuse of the concession of bail and an attempt to cause dent in the aura attached to the Court.'**
>
> 14. Thus, the circumstances show that accused Narender Mann when released on bail had tried to interfere in the administration of justice and in such a situation, I do not feel that any Court of concurrent

> jurisdiction is powerless. So, without entering into controversy if any misstatement, made or not; the bail granted to accused Narender Mann is liable to be cancelled on the ground of abusing the discretion granted in his favour. Hence, I cancel the bail granted to accused Narender Mann vide order dated 09.06.2006. The application for cancellation of bail is thus allowed."

5. The question that arises for consideration in the present case is whether the Court, which cancelled the bail, had the power to pass such an order. A related issue would be with regard to the extent of interference by a court of concurrent jurisdiction with an order of bail granted earlier. With regard to the issue of cancellation of bail, the Supreme Court in ***Dolat Ram v. State of Haryana: (1995) 1 SCC 349*** held as under:-

> "4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial."

In ***Vikramjit Singh v. State of Madhya Pradesh: 1992 Supp (3) SCC 62***, the Supreme Court observed as under:-

> "It appears that the learned Judge while passing the impugned order, failed to appreciate that no Bench can comment on the functioning of a co-ordinate Bench of the same Court, much-less sit in judgment as an appellate Court over its decision. If the State was aggrieved by the order of bail by Mr. Justice B.C. Varma it could have approached this Court but, that was not done. The judgment of Mr. Justice B.C. Varma, therefore, became final so far the High Court was concerned. If the appellant had misused the bail or new materials came to light, it would have been open to the prosecution to move for cancellation, but that is not the position in the present case. On the basis of the same materials and in the same circumstances in which the order was earlier passed in favour of the appellant by the High Court, the application for cancellation was made entirely as a sequel to the observations made by Mr. Justice Gupta while dealing with the application of another accused. It must be, therefore, held that Mr. Justice Gupta had no authority to upset the earlier order of the High Court. That which could not be done directly could also not be done indirectly. Otherwise, a party aggrieved by an order passed by one Bench of the High Court would be tempted to attempt to get the matter reopened before another Bench, and there would not be any end to such attempts. Besides, it was not consistent with the judicial discipline which must be maintained by Courts both in the interest of administration of justice by assuring the binding nature of an order which becomes final, and the faith of the people in the judiciary."

In ***Harjeet Singh v. State of Punjab: (2002) 1 SCC 283***, the Supreme Court held as under:-

> "8. In our view, the submission made by the learned counsel for the appellant is a justified one. It is not open to the other Judge of the High Court to sit in appeal against the order passed by coordinate Bench of the same Court. If the accused had obtained bail order by misrepresentation or by suppression of facts, it is for the State Government or the aggrieved party to approach the appropriate higher forum. In any case, for

> cancellation of the bail on the grounds of misrepresentation or misstatement, the matter ought to have been placed before the same judge.
>
> xxxxxxxxxxxxxx
>
> 11. In this view of the matter, this appeal is allowed, the impugned order is set aside. It would be open to the State Government or the aggrieved party to approach the Court for cancellation of bail on the ground of any objectionable conduct on the part of the accused and/or by pointing out that the order granting bail was obtained by suppression of material fact and in such case matter may be placed before the same Judge, who granted bail, if available."

6. Considering the aforesaid decisions of the Supreme Court, it is more than clear that the considerations which are required to be taken into account at the stage of consideration of a bail application and those which are required to be examined at the time of consideration of an application for cancellation of bail, are entirely different. Once bail is granted, there is need for very cogent and overwhelming circumstances to upset the order of bail. The Supreme Court has broadly indicated that the grounds for cancellation of bail could possibly be where there is an attempt to interfere with the due course of administration of justice, or where there is an abuse of the concession granted to the accused, or where new material comes on record, or where bail was earlier granted on the basis of suppression of facts and or misrepresentation / misstatement. It is also clear from the Supreme Court decisions that a Court of concurrent jurisdiction ought not to interfere with an order of bail already granted, inasmuch as such interference would amount to the subsequent court

virtually functioning as a Court of appeal / revision in respect of the earlier court, which is not permissible. It is only in exceptional circumstances, as indicated by the Supreme Court above, that a Court of concurrent jurisdiction can interfere with an order of bail already granted.

7. In the present Case, it would be pertinent to note that insofar as the incident of 04.07.2006 is concerned, a bail application had been moved by one Virender Malik, who is a co-accused in FIR No. 524/2006 and this Court by an order dated 11.09.2006 had granted bail to the said Virender Malik. While granting bail, this Court had, *inter alia,* observed that the sequence of events leading up to the alleged incident of 04.07.2006 also created a serious doubt with regard to the prosecution case. The doubt expressed in that order also attaches to the present case insofar as the incident of 04.07.2006 is concerned. It must be remembered that it is solely on the basis of this alleged incident that the petitioner's bail has been cancelled. If there is doubt with regard to the said incident, as has already been expressed by this Court in Virender Malik's bail application, the same doubt would remain for the purposes of the present case. Therefore, I am of the view that the order of cancellation of bail cannot stand. At the same time, I find that the order granting bail on 09.06.2006 in FIR No. 200/2006 is not quite satisfactory inasmuch as it does not fully indicate the circumstances under which bail was granted. Accordingly, I am of the view that the impugned order of cancellation of bail passed on 24.08.2006 requires to

be set aside because it is not well-founded and is not in accordance with the principles set down by the Supreme Court. At the same time, I also set aside the order dated 09.06.2006 whereby bail was granted to the petitioner. I remand the matter to the learned Additional Sessions Judge for reconsideration of the bail application of the petitioner on merits *de hors* the alleged incident of 04.07.2006. With these directions, the revision petition and the said bail application stand disposed of.

BADAR DURREZ AHMED
(JUDGE)

April 17, 2007
sr